IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO: 16007 of 2004

Between:

M/s Sri Kanakadurga Transports, H.No.3/252, Peta Kurnool, rep.by its Managing Partner, A.Sudarshan Gupta, S/o Late Rama Subbaiah Gupta, aged 48 years, Kurnool District.

..... PETITIONER

AND

1 The AP State Civil Supplies Corporation Ltd. rep.by its

Vice-Chairman and managing Director, Hyderabad
2 Sri A.Laxmana Swamy, S/o A.Janakiramaiah,
R/o H.No.3-22-99, Raja Street, Kollapur, Mahabubnagar District.
3 Sri Basava Raju, S/o
R/o Old Town, Near Library, Mahabubnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring the Notice No.PDS/MOVT/FG(1)/2004-05, dated 4-9-2004 as illegal, arbitrary and further direct the Respondent -Corporation to award contract to the petitioner in pursuance of the cancellation of the award of Contract vide Procd.No.PDS.2/MOVT/FG.5(22)/9828/2004-05 dated 4-9-2004 for Transportation of Food Grains, Pulses etc., for the period from 1-8-2004 to 31-7-2005 since the petitioner being the immediate lowest tenderer.

Counsel for the Petitioner: MR.P.RAGHAVENDRA REDDY

Counsel for the Respondent No.1: MR.M.B.THIMMA REDDY (SC FOR CIVIL SUPPLIES)

Counsel for the Respondent Nos.2 & 3: None appeared

The Court at the stage of admission made the following:

HONOURABLE DR. JUSTICE G.YETHIRAJULU

WRIT PETITION NO.16007 OF 2004

ORDER:

The petitioner is one of the tenderers, who offered his tender for the tender notice issued by the respondent-Corporation on 06-07-2004 regarding transportation of food grains from godowns to the fair price shop points for the period from 01-08-2004 to 31-07-2005. The last date for submission of tenders was 28-07-2004. The tenders were opened on 28-07-2004. The petitioner and 34 others submitted their tenders along with EMD of Rs.2 lakhs each. On the next day of the opening of the tenders, negotiations were held among all the tenderers, but only 29 persons participated in the negotiations. One R.Narsimha Reddy was the lowest tenderer, and the contract was awarded to him by the respondent-Corporation through its proceedings dated 29-07-2004. In pursuance of that, the said R.Narsimha Reddy was required to enter into an agreement with the respondent-Corporation within three days from the date of receipt of the order. But the said Narsimha Reddy did not enter into an agreement with the respondent-Corporation within the prescribed time. Through proceedings dated 04-09-2004, the contract conferred in favour of Sri Narsimha Reddy was cancelled and his EMD was forfeited by keeping him in the black list. After awarding the contract to Sri Narsimha Reddy, the tenders of 31 persons were rejected leaving the petitioner as L-2, the respondents 2 and 3 as L-3 and L-4, and their EMD amounts were returned vide proceedings dated 20-08-2004. However, the EMD amounts of the three lowest tenderers namely the petitioner, and respondents 2 and 3 were withheld by the respondent-Corporation.

2. The grievance of the petitioner is that while the matter stood thus, the respondent-Corporation issued a notice on 04-09-2004 to all the persons including, those whose tenders were already rejected to attend for re-negotiations on 09-09-2004 at 11 AM. Therefore, the petitioner approached this Court through this writ petition questioning the validity of the said notice by contending that the respondent-Corporation, instead of holding negotiations with

the petitioner and respondents 2 and 3, is introducing a peculiar procedure calling the persons, whose tenders were rejected for negotiations, without following the procedure prescribed under the relevant rules and clauses of the tender notification.

3. The learned counsel for the respondent-Corporation submitted that since there remained only three persons for negotiations, the respondent-Corporation thought it fit to call the other persons whose tenders were rejected to create more competition among them and to confirm the contract at the lesser price in the interest of public and to save the public money. The learned counsel for the respondent-Corporation also drew the attention of this Court to a judgment of a single bench of this Court in **Shaik Afzal & Another v. Andhra Pradesh Civil Supplies Corporation Ltd., Hyderabad,** in support of his contention that there is nothing wrong in calling the persons whose tenders were rejected for negotiations. In the said judgment, this Court held that the negotiations with tenderers need not be limited to one time and such negotiations can be done as many times as the concerned authorities consider necessary, when they are done in the public interest. But the case covered by the above decision is not a case where the persons, whose tenders were rejected, were called for negotiations.

4. Therefore, though there is no dispute regarding the principle laid down by this Court, the facts of the above case are different from the facts covered by this case. When the respondent-Corporation took a decision that the tenders of 31 persons are liable to be rejected and when resorted to refund the EMD after passing the rejection orders, it is not appropriate on the part of the concerned authority to again call them for negotiations. As per the terms of the tender also, the Corporation is empowered to have negotiations with the tenderers. When once the tenders of certain individuals are rejected, they cannot be termed as tenderers, and calling such persons for negotiations would amount to calling anybody from the public. Therefore, it would be appropriate for the respondent-Corporation either to have negotiations with the petitioner and respondents 2 and 3 to arrive at a reasonable rate, and if the concerned authorities are of the view that the out come of the negotiations is not in the interest of the Corporation or it is not beneficial to the Corporation, it would be appropriate for the respondent-Corporation to call for fresh tenders by giving

vide publicity to create competition among contractors, who come forward to under take the said work.

5 . In the result the Writ Petition is allowed with the following observations:

i. the notice dated 04-09-2004 of the respondent-Corporation is quashed;

ii. the respondent-Corporation is at liberty to finalize the tenders through negotiations with the petitioner and respondents 2 and 3, and if the Corporation finds that the outcome of the negotiations is not beneficial to the Corporation and the rates offered by those persons are not reasonable, it has every liberty to go for a fresh tender notification by giving wide publicity to create competitiveness among the contractors.

No order as to costs.

Dr. G.YETHIRAJULU, J

09th September, 2004

SKM

Note:

Operative portion by wire

B/o.

skm

TO

1 The Vice-Chairman and Managing Director, AP State

Civil Supplies Corporation Ltd., Hyderabad
2 Two C.D. Copies.